HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

daily floor report

Friday, May 08, 2015
84th Legislature, Number 66
The House convenes at 9 a.m.
Part Three

Eleven of the bills set for second-reading consideration on the daily calendar are listed on the following page.

The House will consider a Local, Consent, and Resolutions Calendar.

Alma Allen
Chairman
84(R) - 66

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Friday, May 08, 2015

84th Legislature, Number 66

Part 3

SUBJECT: Requiring pretrial hearings in criminal cases on request of defendant

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 4 ayes — Herrero, Moody, Leach, Shaheen

1 nay — Simpson

2 absent — Canales, Hunter

WITNESSES: For — Kristin Etter, Texas Criminal Defense Lawyers Association; Elizabeth Henneke, Texas Criminal Justice Coalition; Kate Murphy, Texas Public Policy Foundation; (*Registered, but did not testify*: Charles Reed, Dallas County; Mark Bennett, Harris County Criminal Lawyers Association; Amanda Marzullo, Texas Defender Service)

Against — None

DIGEST: CSHB 452 would require courts to set a pretrial hearing in any criminal case, with some exceptions, if within 60 days before the trial, the defendant requested a hearing. Courts would be required to hold the requested hearing at least 30 days before the trial and to rule at the hearing on all pretrial motions, to the extent feasible. The bill's requirement would not apply to cases that are punishable by a fine only and to those punishable by a fine and a sanction other than confinement or imprisonment. It also would not apply to offenses in the Alcoholic Beverage Code, ch. 106 that relate to minors and that do not include potential confinement.

If a court failed to comply with a pretrial hearing request, the defendant would be entitled to a continuance. Failure to hold a hearing would not be grounds for dismissal. A court could not sustain a motion to set aside an indictment, information, or complaint for failure to provide a speedy trial based solely on the failure of the court to comply with a request for a pretrial hearing.

The bill would take effect September 1, 2015, and would apply only to

cases in which an indictment or information was presented on or after that date.

SUPPORTERS SAY:

CSHB 452 would improve judicial efficiency by ensuring that pretrial hearings occur in all criminal cases in which defendants find them necessary. Currently, judges may hold pretrial hearings at their own discretion. This means that judges can refuse to hold hearings and force parties to prepare for a trial, even if the issues in dispute might result in no trial if addressed in a pretrial hearing. For example, a pretrial hearing could resolve questions about the admissibility of evidence. Preparing for unnecessary trials can be costly and burdensome for taxpayers, defendants, victims, witnesses, and others involved in the criminal justice system.

Under the bill, judges would retain control of their dockets in setting the hearing, establishing time limits, and determining other parameters for the hearings. The bill would ensure courts are not overwhelmed by excluding certain low-level cases. The bill would balance the needs of defendants and courts by prohibiting the failure to comply with the bill from being grounds for dismissal. The bill also would establish timelines for requests and hearings, so that last-minute requests could not be made as a delaying tactic.

OPPONENTS SAY:

CSHB 452 could reduce the ability of judges to manage their dockets as they saw fit. Currently, judges hold pretrial hearings when it is appropriate, and the bill could result in hearings that judges did not think were necessary or force hearings to be held at a time judges did not think best. The ability to force a judge to hold a pretrial hearing could be abused and used as a delaying tactic, especially since the bill would not limit the number of these requests.

OTHER OPPONENTS SAY:

If the state is going to require courts to hold pretrial hearing, it also should be fair to defendants and give them the remedy of a dismissal if courts do not comply with the requirement.

SUBJECT: Requiring minimum standards for in-person visitation at county jails

COMMITTEE: County Affairs — committee substitute recommended

VOTE: 6 ayes — Coleman, Farias, Romero, Spitzer, Stickland, Wu

3 nays — Burrows, Schubert, Tinderholt

WITNESSES: For — Matt Simpson, American Civil Liberties Union of Texas; Jorge Renaud, Center for Community Change; Greg Casar, City Council District 4; Bob Libal, Grassroots Leadership; Cate Graziani, Mental Health America of Texas; Josh Gravens, Texas Citizens United for Rehabilitation of Errants (CURE); Alexandra Chirico, Texas Criminal Justice Coalition; Douglas Smith, Texas Criminal Justice Coalition; Richard Gladden; Lisa Haufler; Lauren Johnson; Jaynna Sims; (*Registered, but did not testify*: Kathryn Freeman, Christian Life Commission; Charles Reed, Dallas County Commissioners Court; Jon Cordeiro, New Name Ministries; Erica Gammill, Prison Justice League; Allen Place, Texas Criminal Defense Lawyers Association; Rebecca Bernhardt, Texas Fair Defense Project; Joshua Houston, Texas Impact; Diana Claitor, Texas Jail Project; Mary Sue Molnar, Texas Voices for Reason and Justice; Raylene Truxton, Texas Inmate Families Association; and 18 individuals)

Against — Raul Banasco, Bexar County Sheriff's Office; Mark Mendez, Tarrant County Commissioners Court; Donald Lee, Texas Conference of Urban Counties; (*Registered, but did not testify*: Seth Mitchell, Bexar County Commissioners Court; William Travis, Micah Harmon, AJ Louderback, and Dennis D. Wilson, Sheriffs' Association of Texas; Glen Whitley, Tarrant County; Peter Marana; R. Glenn Smith)

On — Donna Warndof, Harris County; (*Registered, but did not testify*: Diana Spiller and Brandon Wood, Texas Commission on Jail Standards)

BACKGROUND: Under 37 Texas Administrative Code, part 9, sec. 291.4, the Texas Commission on Jail Standards requires jail facilities, with approval from the commission, to have and implement a written plan governing inmate

visitation. A facility must provide each inmate a minimum of two visitation periods per week of at least 20 minutes each.

DIGEST:

CSHB 549 would expand the duties of the Texas Commission on Jail Standards by requiring the commission to adopt rules and procedures for minimum county jail standards for inmate visitation that provide each prisoner at a county jail with a minimum of two in-person, noncontact visitation periods per week. These visitations would have to be at least 20 minutes in duration.

Rules or procedures adopted by the Texas Commission on Jail Standards could not restrict the authority of a county jail under the commission's rules in effect on September 1, 2015, to limit prisoner visitation for disciplinary reasons.

The commission would be required to establish standards required by the bill by January 1, 2016.

This bill would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 549 would increase an inmate's options for access to family and friends through in-person visitation. The bill would not, nor is it intended to, eliminate the use of video visitation. The method of visitation should be the choice of the family member. Video visitation can have benefits, including providing a visitation option for family members who live far away. However, video visitation does not offer the same positive impact that in-person visitation can offer. In-person visitation with family is crucial to maintaining relationships, especially as it pertains to developing and maintaining bonds between parents and children.

The mental wellness and behavior of inmates is better when in-person visitation is offered. Studies show that the elimination in-person visitation in county jails was followed by an increase of inmate-on-staff assaults.

Prohibiting in-person visitation can be a financial burden on low-income families due to fees charged for video service. Many video technology providers require a deposit to open a video account or charge families by the minute to use the system.

OPPONENTS SAY:

By requiring county jails to offer in-person visitation, CSHB 549 would create a significant cost to counties and an administrative burden to facilities. There are several facilities with video-only visitation capabilities that have no existing infrastructure to offer in-person visitation. To offer in-person visitation, these facilities would need secured rooms, increased surveillance, and extra staff. Because in-person visitation is a manual process, it requires more resources and time than some counties could offer without bearing substantial costs, which would fall to county residents.

Sheriffs should continue to have the authority to decide what practices are best for their facilities. Facilities are authorized to establish and implement inmate visitation plans with approval from the Texas Commission on Jail Standards. This approval should be sufficient to prove that visitation plans satisfy their purpose, which is to allow inmates spend time with family members.

SUBJECT: Setting the statute of limitation for aggravated assault

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 4 ayes — Herrero, Leach, Shaheen, Simpson

0 nays

3 absent — Moody, Canales, Hunter

WITNESSES: For — Justin Wood, Harris County District Attorney's Office; (*Registered, but did not testify*: Fredrick Frazier, Dallas police Association; Dusty Gallivan, Ector County Attorney; Jessica Anderson, Houston Police Department; Mark Clark, Houston Police Officer's Union; Bill Elkin, Houston Police Retired Officers Association; Harding, MEEEL, Inc.)

Against — (*Registered, but did not testify*: Diana Clark, MEEEL, Inc.)

BACKGROUND: Code of Criminal Procedure, art. 12.03 states that any aggravated offense bears the same limitation period as the primary crime, which is two years for assault. Aggravated assault is a second-degree felony offense, and Code of Criminal Procedure, art. 12.01 states that all felonies in that chapter carry at least a three-year statute of limitation.

DIGEST: HB 580 would amend the Code of Criminal Procedure to specify that the statute of limitation for the offense of aggravated assault is three years from the date on which the offense was commissioned. The bill also would specify that any offense that carries the title of "aggravated" would have the same limitation period as the primary crime if a limitation period had not otherwise been specifically provided for the aggravated offense under another provision of the same chapter of law.

The bill would take effect September 1, 2015, and would not apply to any offense for which prosecution becomes barred by limitation before the effective date of the bill.

SUBJECT: Designating certain state agency employees as veterans liaisons

COMMITTEE: Defense and Veterans' Affairs — committee substitute recommended

VOTE: 7 ayes — S. King, Frank, Aycock, Blanco, Farias, Schaefer, Shaheen

0 nays

WITNESSES: For — (*Registered, but did not testify*: Jim Brennan, Texas Coalition of Veterans Organizations)

Against — None

On — Randy Nesbitt, Texas Department of Licensing and Regulation; Jeff Williford, Texas Veterans Commission; Chris Jaramillo; (*Registered, but did not testify*: Andre Smith, HHSC)

DIGEST: CSHB 1457 would require state agencies with more than 500 full-time employees to designate one full-time employee to serve as the veterans liaison for the agency. The bill would require that existing resources be used in the designation and that the employee's duties as veterans liaison be secondary to their primary duties for the agency.

The veterans liaison would be required to:

- stay informed on trends and developments in hiring veterans for positions within the agency and of services available to veterans both within and outside of the agency;
- recruit veterans for open positions within the agency; and
- serve as the contact for veterans both within and outside the agency for the purpose of providing information about the agency, veterans employment, and services available within and outside the agency.

Each applicable state agency would have to designate a veterans liaison by December 1, 2015.

The bill would take effect September 1, 2015.

SUBJECT: Revising prenatal syphilis testing requirements

COMMITTEE: Public Health — favorable, without amendment

VOTE: 9 ayes — Crownover, Naishtat, Coleman, S. Davis, Guerra, R. Miller, Sheffield, Zedler, Zerwas

0 nays

2 absent — Blanco, Collier

WITNESSES: For — Thomas Schlenker, San Antonio Metropolitan Health District; (*Registered, but did not testify*: Lindsay Lanagan, City of Houston; Eileen Garcia, Texans Care for Children; Jennifer Smith, Texas Association of City and County Health Officials; Clayton Travis, Texas Pediatric Society; Andrew Smith, University Health System)

Against — None

On — (*Registered, but did not testify*: Sydney Minnerly, Department of State Health Services)

BACKGROUND: Health and Safety Code, sec. 81.090 establishes requirements for diagnostic testing during pregnancy and after a child's birth. Current law requires that every pregnant woman in Texas be tested for syphilis at her first prenatal visit and at delivery. The Centers for Disease Control and Prevention recommend that in communities where rates of congenital syphilis are high, pregnant women also should be tested for syphilis in the third trimester of pregnancy.

DIGEST: HB 2906 would revise the times at which pregnant women would have to be tested for syphilis. In addition to the currently required test at the first prenatal exam or visit, women would have to be tested in the third trimester. The current requirement for testing at delivery would be eliminated unless results from a third-trimester test were not in a woman's medical records.

If the woman's medical records at delivery did not include results from a

third-trimester syphilis test, the physician or other person in attendance would be required to take a sample and have the test performed. If the woman's records did not include results from a third-trimester test and a test was not performed before delivery, the physician or other person in attendance would have to take sample from the newborn within two hours of birth and have it tested.

The bill would take effect September 1, 2015, and would apply only to samples submitted on or after that date.

NOTES: The author plans to offer a floor amendment that would make several changes, including:

- prohibiting the test performed in the third trimester from being performed earlier than the 28th week of pregnancy;
- making a person responsible for the newborn child, instead of a person in attendance at the birth, one of those who can order the test for the newborn; and
- requiring the Department of State Health Services to report by January 1 of odd-numbered years to the Legislature on the number of cases of early congenital syphilis and late congenital syphilis that were diagnosed in the preceding biennium.

SUBJECT: Limiting judicial review over certain nutritional programs

COMMITTEE: Agriculture and Livestock — favorable, without amendment

VOTE: 6 ayes — T. King, C. Anderson, Cyrier, M. González, Rinaldi, Springer

1 nay — Simpson

WITNESSES: For — None

Against — None

On — Stephen Dillon, Texas Department of Agriculture

BACKGROUND: Agriculture Code, sec. 12.0025 provides a list of eight state and federal nutrition programs administered by the Texas Department of Agriculture.

DIGEST: HB 3944 would provide that a decision of the Department of Agriculture's administrative review official or the State Office of Administrative Hearings related to one of the nutrition programs the department administers would be the final administrative determination of the department and would not be subject to judicial review.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

SUBJECT: Creating professional development academies for school counselors

COMMITTEE: Public Education — favorable, without amendment

VOTE: 11 ayes — Aycock, Allen, Bohac, Deshotel, Dutton, Farney, Galindo, González, Huberty, K. King, VanDeaver

0 nays

WITNESSES: For — (*Registered, but did not testify*: David Anderson, Arlington ISD Board of Trustees; Jon Fisher, Associated Builders and Contractors of Texas; Jason Sabo, Children at Risk; Jay Barksdale, Dallas Regional Chamber; Drew Scheberle, Greater Austin Chamber of Commerce; MaryAnn Whiteker, Hudson ISD; Mike Meroney, Huntsman Corp., BASF Corp., and Sherwin Alumina, Co.; Howell Wright, Huntsville ISD; CJ Tredway, Independent Electrical Contractors of Texas; Annie Spilman, National Federation of Independent Business Texas; Chris Shields, San Antonio Chamber of Commerce; Chanley Dollgener, Texas Council Association; Dwight Harris, Texas American Federation of Teachers; Nelson Salinas, Texas Association of Business; Felicia Wright, Texas Association of Builders; Barry Haenisch, Texas Association of Community Schools; Fred Shannon, Texas Association of Manufacturers; Casey McCreary, Texas Association of School Administrators; Patrick Tarlton, Texas Chemical Council; Janna Lilly, Texas Council of Administrators of Special Education; Jan Friese, Texas Counseling Association; Edward Hicks IV, Texas Counseling Association; Cyndi Matthews, Texas Counseling Association; Mark Terry, Texas Elementary Principals and Supervisors Association; Kyle Ward, Texas Parent Teacher Association; Colby Nichols, Texas Rural Education Association; Maria Whitsett, Texas School Alliance; Portia Bosse, Texas State Teachers Association; Les Findeisen, Texas Trucking Association; LeAnn Solmonson, Texas Counseling Association; Monty Exter, the Association of Texas Professional Educators; Daniel Womack, the Dow Chemical Company; Max Jones, the Greater Houston Partnership; Grover Campbell, Texas Association of School Boards; Casey Smith, United Ways of Texas; and 23 individuals)
Against — None

On — Steve Swanson; (*Registered, but did not testify*: Charlotte Coffee; Steven Aleman, Disability Rights Texas; Monica Martinez, Texas Education Agency)

BACKGROUND: Education Code, ch. 33, subch. A governs school counselors and counseling programs.

DIGEST: HB 18 would amend ch. 33 to require the commissioner of education to develop postsecondary education and career counseling academies for school counselors working at middle, junior high, or high schools. The commissioner would create these academies with input from school counselors, the Texas Workforce Commission, higher education institutions, and business and community leaders.

Academies would provide counselors with knowledge and skills to provide counseling to students on postsecondary success and career planning. A school counselor who attended the academy would be entitled to receive a stipend in an amount determined by the commissioner. Any stipend received could not be considered in determining whether a district was paying the school counselor the minimum monthly salary specified in statute.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

NOTES: According to the Legislative Budget Board's fiscal note, HB 18 would cost the state $2.7 million in fiscal 2016-17.

SUBJECT: Allowing certain limitations, filing periods in property insurance policies

COMMITTEE: Insurance — favorable, without amendment

VOTE: 6 ayes — Frullo, G. Bonnen, Meyer, Paul, Sheets, Workman

2 nays — Guerra, Vo

1 absent — Muñoz

WITNESSES: For — Paul Solomon, State Farm Insurance Companies; Beaman Floyd, Texas Coalition for Affordable Insurance Solutions; Kathleen Hunker, Texas Public Policy Foundation; (*Registered, but did not testify*: Fred Bosse, American Insurance Association; Jay Thompson, Association of Fire and Casualty Companies of Texas (AFACT); Amanda Miller, Independent Insurance Agents of Texas; Paul Martin, National Association of Mutual Insurance Companies; Annie Spilman, National Federation of Independent Business-TX; Mike Hull, Texans for Lawsuit Reform)

Against — John (Lin) McCraw, Texas Trial Lawyers Association; Ware Wendell, Texas Watch

On — (*Registered, but did not testify*: Marilyn Hamilton, Texas Department of Insurance)

BACKGROUND: Civil Practice and Remedies Code, sec. 16.070 provides that a contract cannot limit the statute of limitations to bring a lawsuit based on the contract to a period shorter than two years. Sec. 16.051 provides the residual limitations period for all actions that do not have a clear statute of limitations, such as disputes based on contracts. Those claims must be brought not later than four years after the day the cause of action accrues.

Claims for loss that are filed with the insurance provider many years after the alleged loss are difficult to investigate or resolve. A clear deadline for filing a claim could give certainty to both insurance providers and insured individuals.

DIGEST:

HB 3787 would allow a policy form or printed endorsement form for residential or commercial property insurance that was filed by an insurer or adopted by the Texas Department of Insurance to provide a certain contractual limitations period for filing suit on a first-party claim under the policy.

The contractual limitations period could not end before the earlier of two years from the date the insurer either accepted or rejected the claim or three years from the date of loss. A contractual provision contrary to this contractual limitations period would be void.

The bill would allow a policy or endorsement to contain a claim filing period. It could require that a claim be filed with the insurer no later than one year after the date of loss.

If a policy form or endorsement form included a contractual limitations or a claim filing period described above, an insurer using that form would be required to disclose in writing to an applicant or insured the contractual limitations or claims filing period. The disclosure would be given when the policy or endorsement was issued or renewed.

The bill would take effect September 1, 2015, and would not apply to policies delivered, issued for delivery, or renewed before January 1, 2016.

SUBJECT: Allowing warrants for blood specimens for contiguous counties

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 6 ayes — Herrero, Moody, Canales, Hunter, Leach, Shaheen

1 nay — Simpson

WITNESSES: For — Warren Diepraam, Waller County District Attorney's Office; (*Registered, but did not testify*: Robert Foster, Austin pd; Richard Mabe, Austin police department; Steve Dye, Grand Prairie Police Department; Bill Elkin, Houston Police Retired Officers Association; Tiana Sanford, Montgomery County District Attorney's Office; Bill Lewis, Mothers Against Drunk Driving; Deanna L. Kuykendall (pronounce: kirk-in-doll), Texas Municipal Courts Association; Lon Craft and Heath Wester, Texas Municipal Police Association)

Against — Chris Howe; (*Registered, but did not testify*: Joe Palmer; Kelley Shannon, Freedom of Information Foundation of Texas)

BACKGROUND: Code of Criminal Procedure, art. 1.23 establishes that warrants for blood issued by judges of the Court of Criminal Appeals, justices of the Texas Supreme Court, justices of the courts of appeals, and judges of the district courts have statewide authority. However, other magistrates lack jurisdiction to issue a search warrant to be executed outside of their own county. This disparity can be problematic because magistrates are often more accessible to sign warrants and each moment that passes allows time for a suspect's body to metabolize any alcohol consumed by the suspect.

DIGEST: CSHB 460 would allow an officer seeking a warrant to collect a blood specimen from a person suspected of committing an intoxication offense, such as driving while intoxicated or intoxication assault, to obtain the warrant from certain additional magistrates. Under the bill, the officer could obtain a warrant from a magistrate with jurisdiction in the county where the suspect was stopped, or from a magistrate judge in a county contiguous to the county where the suspect was stopped, if the officer first attempted to obtain a warrant from the magistrate serving the criminal

court in the county where the suspect was stopped.

A warrant issued by a magistrate in a county contiguous to the one where the suspect was stopped could be executed in county where the suspect was stopped regardless of the issuing court's jurisdiction.

This bill would take effect September 1, 2015 and would apply only to search warrants issued on or after that date.

SUBJECT: Creating a process for removal of an official in home-rule municipalities

COMMITTEE: Urban Affairs — favorable, without amendment

VOTE: 5 ayes — Alvarado, Hunter, R. Anderson, Bernal, Elkins

1 nay — Schaefer

1 absent — M. White

WITNESSES: For — Wesley Jameson

Against — (*Registered, but did not testify*: TJ Patterson, City of Fort Worth)

BACKGROUND: Local Government Code, sec. 51.072 grants a home-rule municipality the full power of local self-government.

Government Code, ch. 551, establishes open meeting requirements for government bodies.

DIGEST: HB 3380 would prohibit the governing body of a home-rule municipality from removing an elected officer based solely on an administrative violation of the municipality's charter.

Any removal process a municipality established would be required to provide a written notice to the elected officer of the grounds for removal and an opportunity for a public hearing that complied with certain requirements, including publishing a notice of the hearing and compliance with state open meeting laws.

This bill would not prohibit the voters of a municipality from removing an official if authorized by the municipal charter. Any municipality that does not have a process of removal as required by the provisions of the bill would be required to establish a process no later than October 1, 2015.

The bill would take effect September 1, 2015.

SUBJECT: Providing grants for mortgage lenders in low-income neighborhoods

COMMITTEE: Investments and Financial Services — committee substitute recommended

VOTE: 7 ayes — Parker, Longoria, Capriglione, Flynn, Landgraf, Pickett, Stephenson

0 nays

WITNESSES: For — Kristen Schulz, Dallas Area Habitat for Humanity; John Fleming, Texas Mortgage Bankers Association

Against — None

On — (*Registered, but did not testify*: Caroline Jones, Department of Savings and Mortgage Lending; Homero Cabello, Texas Department of Housing and Community Affairs)

BACKGROUND: In 2012, the federal government, 49 states, and individual borrowers entered an agreement with the five largest home lending institutions in the United States for $25 billion to settle claims of improper lending practices. Texas received about $134.6 million under the settlement, about $10 million of which was deposited in the attorney general's dedicated judicial fund and the rest into general revenue. The House-passed version of the general appropriations act for fiscal 2016-17 includes $125.2 million in Article 11 contingent on the enactment of HB 2473 for the Department of Housing and Community Affairs to create and administer an affordable homeownership assistance program.

DIGEST: CSHB 2473 would direct the Texas Department of Housing and Community Affairs to create and administer a program to provide grants to organizations that:

- had a history of making below-market rate residential mortgage loans to low and moderate income households;
- provided homebuyer education services; and
- provided post-home purchase counseling and support services.

An organization that received a grant would be required to use the grant money to make residential loans in neighborhoods where homeownership rates were lower than 50 percent. Priority for grants would be given to organizations that qualified for matching funds from federal or private sources.

An organization awarded a grant also would be required to submit an annual report to the department regarding the organization's use of the grant money and the reinvestment of loan principal and interest payments made to the organization.

The bill would require the Texas Department of Housing and Community Affairs to consult with the Department of Savings and Mortgage Lending in creating and administering the program. The Department of Housing and Community Affairs would be required to adopt rules for the implementation of the bill no later than December 1, 2015.

The bill would take effect September 1, 2015.

NOTES:

The Legislative Budget Board estimates that the bill would have a negative impact of $124.6 million in general revenue funds through fiscal 2016-17, assuming the grant program costs would match the amount received by the state through the mortgage fraud settlement.